

PT 02-10

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**WHEATON FRANCISCAN
CORPORATION,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0059
(99-22-442)
P.I.N: 05-22-201-005**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David J. Chroust of Wildman, Harold, Allen & Dixon on behalf of the Wheaton Franciscan Corporation, Inc. (hereinafter the “applicant”); Mr. Robert G. Rybica, Assistant States Attorney for the County of DuPage, on behalf of the DuPage County Board of Review.

SYNOPSIS: This matter raises the issue of whether real estate identified by DuPage County Parcel Index Number 05-19-201-005 (hereinafter the “subject property”) qualifies for exemption from 1999 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 ILCS 200/1-1, *et. seq.* The underlying controversy arises as follows:

Applicant filed a Petition for Tax Exemption with the DuPage County Board of Review (hereinafter the “Board”) on December 6, 1999. The Board reviewed the petition and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be granted. On June 29, 2000, the Department issued a

determination finding that the subject property is not in exempt ownership and not in exempt use. Applicant filed a timely appeal as to this denial and later presented evidence at an evidentiary hearing. Following a careful review of the record made at hearing, I recommend that the Department's determination in this matter be reversed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this case and its position herein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this case is that the subject property is not in exempt ownership and not in exempt use. Dep. Group Ex. No. 1, Doc. C.
3. The subject property is located at 26 W. 105 Roosevelt Road, Wheaton, IL and improved with a 12-unit facility that provides housing and other supportive services to persons infected with the HIV virus. Dept. Group Ex. No. 1, Doc. B; Applicant Ex. No. 4.
4. Applicant is an Illinois not-for-profit corporation organized and operated by an order of Catholic nuns commonly known as the Franciscan Sisters, Daughters of the Sacred Hearts of Jesus and Mary (hereinafter the "Franciscan Sisters"). Applicant Ex. No. 13.
5. Applicant's organizational purposes, as set forth in its by-laws, are to: (a) serve as an integral part of the Roman Catholic church and carry out its mission; (b) conduct the affairs and further the mission of the Franciscan Sisters; (c) sponsor, develop, promote and encourage private and public participation in services and programs that are charitable, scientific, educational or religious in nature and that address people's physical, mental, social or spiritual needs; and, (d) own, lease or

- hold other interests in real estate for purposes that enable it to fulfill the above goals. Applicant Ex. No. 13.
6. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to the terms of a group letter ruling that the Internal Revenue Service originally issued to the United States Conference of Catholic Bishops on March 26, 1946. This exemption remained in full force and effect throughout the 1999 assessment year. Applicant Ex. No. 20.
 7. Applicant leased the entire subject property to Canticle Place, Inc., (hereinafter "CPI") pursuant to the terms of a lease dated January 1, 1996. Dept. Ex. No. 5.
 8. CPI is an Illinois not for profit corporation affiliated with and operated under auspices of the Catholic Diocese of Joliet. Its by laws indicate that CPI's principal organizational purposes are to:

... provide disabled persons with housing facilities and services specifically designed to meet their needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance, and operation thereof on a nonprofit basis.

Applicant Ex. Nos. 1, 3.

9. CPI is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to the terms of a group letter ruling originally issued to the United States Conference of Catholic Bishops on March 25, 1946. This exemption remained in full force and effect throughout the 1999 assessment year. Applicant Ex. No. 16.
10. CPI operates of a fiscal year that runs from July 1 through June 30. Applicant Ex. Nos. 10, 11.

11. Audited financial statements for CPI's 1999 and 2000 fiscal years reveal the following information about its financial structure:

REVENUE	TOTAL¹	% OF TOTAL²
Rental Income	\$ 147,172.00 ³	70%
Other Unspecified Revenue	\$ 59,477.00	28%
Interest Income	\$ 2,740.00	1%
Net Assets Released From Restrictions Due to Expiration of Time Restrictions	\$ 77,520.00	0%
Gross Revenues	\$ 286,909.00	100%
Less Net Assets Released From Restrictions Due to Expiration of Time Restrictions	\$ (77,520.00)	0%
TOTAL NET REVENUES	\$ 209,389.00	100%
PROGRAM EXPENSES		
Administrative	\$ 53,202.00	19%
Utilities	\$ 16,100.00	6%
Operating & Maintenance	\$ 105,634.00	38%

1. The figures shown on the above charts are derived from the audited financial statements admitted as Applicant Ex. Nos. 10 and 11. These statements present applicant's financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term "year" as meaning "calendar year" (35 ILCS 200/1-155). Because applicant's fiscal year (July 1 through June 30) does not conform to a "calendar year" (January 1 through December 31), it is necessary to present applicant's fiscal structure on the basis of combined figures for its 1998 and 1999 fiscal years. Thus, for example, \$147,172.00 in total revenues attributable to rental income is equal to the sum of \$73,686.00 + \$73,486.00, which are the amounts of revenue applicant received from rental income during its 1999 and 2000 fiscal years.

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses, as the case may be. Thus, $\$147,172.00 / \$209,389.00 = 0.7029$ (rounded four places past the decimal) or 70%.

3. This figure includes both payments from low income individuals occupying the various rental units situated on the subject property and rental subsidy payments from the United States Department of Housing and Urban Development. Tr. p. 42, *See*, Finding of Fact 14, *infra*, at p. 5-6.

Taxes & Insurance	\$ 6,674.00	2%
Depreciation & Amortization	\$ 67,379.00	24%
Elderly & Congregate Service Expenses	\$ 32,000.00	11%
TOTAL PROGRAM EXPENSES	\$ 280,989.00	100%
RECONCILIATION:		
TOTAL PROGRAM EXPENSES	\$ 280,989.00	
LESS TOTAL NET REVENUES	\$- 209,409.00	
NET LOSS	\$ (71,580.00)	

Applicant Ex. Nos. 10, 11.

12. Applicant's lease with CPI states, *inter alia*, that:

- the lease shall run for a period commencing January 1, 1999 and ending 2070;
- CPI, as lessee, shall pay applicant, as lessor, the sum of \$1.00 per year as rent throughout the first fifty years of the term of the lease;
- CPI shall pay applicant a rental amount which represents the fair market value of the subject property throughout the last 25 years of the lease;
- Applicant shall be liable for any and all taxes imposed against its fee interest in the subject property; CPI shall be liable for any and all taxes imposed against its leasehold interest therein;
- CPI shall use the leasehold for no purpose other than constructing and operating a housing project of the type described in Section 811 of the National Affordable Housing Act, 42 USC §§8013(a) – 8013(n).

Applicant Ex. No. 5.

13. Section 811 of the National Affordable Housing Act, 42 USC §§8013(a) – 8013(n), provides, in substance, for the creation programs designed to expand the supply of supportive housing for persons with disabilities. Administrative Notice of 42 USC 8013(a).
14. The programs created under Section 811 include, *inter alia*, those that assist private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Administrative Notice of 42 USC 8013(b)(2)(a), (b).
15. Such assistance is provided in the form of: (a) no interest capital advances from the United States Department of Housing and Urban Development (hereinafter “HUD”), that need not be repaid so long as the property is used to provide housing for very low income persons with disabilities; and, (b) contracts for project rental assistance, wherein HUD provides monthly payments to cover any part of the occupancy costs that are not met from the project income. Administrative Notice of 42 USC 8013(d)(1), (d)(2).
16. A person shall be considered to have a disability, under 42 USC 8013(k)(2) if such person is determined, pursuant to regulations promulgated by the Secretary of HUD, “to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.” Administrative Notice of 42 U.S.C.A § 8013(k)(2).

17. A person shall also be considered to have a disability if such person has a developmental disability of the type defined in 42 U.S.C.A §15002(8).⁴
18. The income level for a “very low income” person can not exceed “50% of median income.” Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.⁵
19. 42 U.S.C.A § 8013(d)(3) states, *inter alia*, that “a very low income person shall pay as rent for a dwelling unit [of the type located within the subject property] the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of

4. 42 USCA § 15002 states:

8) Developmental disability

- (A) In general. The term "developmental disability" means a severe, chronic disability of an individual that -- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care; (II) Receptive and expressive language; (III) Learning; (IV) Mobility; (V) Self-direction; (VI) Capacity for independent living; (VII) Economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.
- (B) Infants and young children. An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

42 USCA § 15002(A), (B).

5. These regulations do not define how “median income” is to be measured.

the person's adjusted monthly income,⁶ (B) 10 percent of the person's monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated ...[.]” Administrative Notice of 42 U.S.C.A. § 8013(d)(3).

20. 42 U.S.C.A § 8013(i)(1) provides, *inter alia*, that “an owner shall adopt written tenant selection procedures that are satisfactory to the Secretary [of HUD] as (A) consistent with the purpose of improving housing opportunities for very low income persons with disabilities; and (B) reasonably related to program eligibility and [the program] applicant's ability to perform the obligation of the lease.” 42 U.S.C.A § 8013(i)(1).

21. HUD must approve the form of all of leases used in Section 811 housing projects. Administrative Notice of 24 CFR §236.750(a).

22. Pursuant to 42 USC 8013(b)(2), CPI and HUD entered into a capital advance regulatory agreement on February 1, 1996. This agreement: (a) was prepared by HUD using the same form that it uses for regulatory agreements that provide financing for housing projects built under Section 202 of the Housing Act of 1959, 12 USC § 1701 *et seq.*; and, (b) provided CPI with the funding it required to build a Section 811 housing project on the subject property. Applicant Ex. No. 6.

6. HUD and CPI adjust the resident's income to account for things such as dependent's allowance, allowance for handicapped assistance and medical expenses.

23. The capital advance agreement contains the following relevant terms and conditions:

- CPI is to submit an operating budget, listing all necessary operating expenses and projected revenues, to HUD no later than 30 days prior to the beginning of each fiscal year;
- CPI must submit a complete annual fiscal report to HUD within 60 days of the end of each fiscal year;
- CPI expressly grants HUD a security interest in all rentals and other operating income it receives from the subject property as collateral for the capital advance and other financial obligations attendant thereto;
- CPI is specifically forbidden to transfer, dispose of or otherwise encumber the subject property without prior approval from HUD;
- CPI is also specifically prohibited from requiring as a condition of occupancy, “any consideration or deposit other than a security deposit in an amount equal to one month’s total tenant payment or \$50.00, whichever is greater[;]”
- CPI may collect any security deposit it so requires in installments, but also, can expect that the family responsible for making this deposit will pay it “from its own family resources and other available public or private resources[;]”
- Absent express approval from HUD, CPI shall not permit any of the residential units contained within the low income housing project to be used for purposes other than those for which such units were originally intended[;]”
- CPI shall manage the low income housing project in strict accordance with HUD guidelines and provide for a management structure that is acceptable to HUD;

- HUD retains the right to inspect the project and audit all of CPI's records pertaining thereto in order to ensure an acceptable level of compliance;
- CPI is expressly forbidden to collect from any prospective tenant or occupants of the project any admission fee, founder's fee, life care fee or similar payment pursuant to any agreement, oral or written, whereby CPI agrees to furnish accommodations in the project to persons making such payments; and,
- In the event that CPI does not fulfill any of its obligations under the agreement, and subsequently fails to cure that breach within 30 days of receiving written notice thereof, then HUD may: (a) take physical possession of the project or bring any action necessary to enforce its rights under the agreement; or, (b) collect all rents and charges due for operation of the facility and apply the proceeds thereof to satisfy CPI's financial obligations under the agreement; or, (c) declare the entire amount of any indebtedness immediately due and payable then continue with necessary foreclosure proceedings; or, (d) bring an appropriate action for specific performance of the agreement; or (e) require CPI to transfer all of its right and title to the project to another non-profit corporation designated by HUD.

Applicant Ex. No. 6.

24. CPI began using the subject property as a housing facility for very low income disabled persons infected with the HIV virus on December 23, 1996. It continued with that use throughout the 1999 assessment year. Dept. Group Ex. No. 1, Doc. B; Tr. pp. 31-32, 38-39.

25. CPI collects rentals that range from \$103.00 to \$368.00 per month from all persons who occupy units in the subject property. It does not charge any service fees or impose any other financial obligations on the residents separate and apart from the rental payments. Applicant Ex. No. 9; Tr. pp. 23-24, 27.
26. All of rentals that CPI collects are calculated in accordance with a formula developed by HUD and represent 30% of each individual's adjusted income. They are also modified according to the individual's ability to pay and subsidized by HUD. *Id.*; Tr. pp. 34-35.
27. These subsidies enable CPI to make up the difference between its actual operating costs and the rentals it received for each unit. Tr. pp. 28, 32-33.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1999 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, 15-65(c). Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for such exemption under 35 **ILCS** 200/15-65(c) should be reversed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (hereinafter the “Code”). The Code provisions which govern disposition of the present matter are contained in 35 ILCS 200/15-40 and 35 ILCS 200/15-65(c) which, in relevant part, provide for the exemption of:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively⁷ for religious purposes,⁸ or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.]

35 ILCS 200/15-40.

200/15-65. Charitable Purposes

§ 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under

7. The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

8. As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Section 202 of the National Housing Act of 1959, [12
U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65(c).

B. The Burden of Proof and Other Introductory Considerations

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994). Therefore, any and all doubts that arise in an exemption proceeding, whether they be attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

This record raises the following “debatable” questions: (1) whether applicant’s lease with CPI constitutes a lease or other use for profit in violation of Sections 15-40 and 15-65 of the Code; (2) whether the subject property qualifies as the type of facility subject to exemption under Section 15-65(c) if used for appropriate purposes; and, (3) whether the subject property was “actually and exclusively used for charitable or

beneficent purposes” within the meaning of Section 15-65 during the 1999 assessment year.

C. Leasing Issue

In Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court held that a leasehold interest, such as the one held by CPI, can be separately exempted from the underlying fee if: (1) the lessor qualifies as the type of entity whose property is exempt from taxation based on use alone or ownership and use;⁹ and, (2) the lessee also qualifies as that type of entity;¹⁰ and, (3) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owned the allegedly exempt leasehold, provided that neither the lessor nor the lessee are profiting from the enterprise. Thus:

It is unnecessary through accounting procedures to ascertain whether [the lessor] actually made a profit from the leasing. That is not the test. This court has often held that it is the primary use of the property and not the ownership that determines its taxable status. [citations omitted].

We likewise consider that it is the primary use to which the property is devoted *after the leasing* which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income. [emphasis added].

9. The lessor in Olson was a religious entity, the School Sisters of St. Francis, an order of Catholic nuns, that demised the subject leasehold to the appellant Children's Development Center.

10. The lessee in Olson, Children's Development Center, was conceded to be a duly qualified charitable institution, whose exemption required ownership and use, for purposes of the appeal therein. *See*, 35 ILCS 200/15-65(a). *Compare*, Village of Oak Park et al v. Rosewell, 155 Ill. App.3d 497 (1st Dist. 1983) (leasehold held by village, whose exemption required ownership alone, held taxable on grounds that village's leasehold interest was legally insufficient to satisfy statutory ownership requirement).

Olson at 336.

Applicant's organizational documents (Applicant Ex. No. 13), and those of CPI (Applicant Ex. No. 1, 2), indicate that both entities qualify as "religious" type organizations. As such, real estate owned by these entities can be exempted from real estate taxation, but only if it is actually and "exclusively" used for "religious" or "charitable" purposes.

Sections 15-40 and 15-65 expressly bars exemption where the property is leased or otherwise used with a view to profit. 35 ILCS 200/15-40, 15-65. The financial terms and conditions of applicant's lease with CPI are inconsistent with a lease for profit because they call for CPI to make nominal rental payments of \$1.00 throughout the first 50 years of the lease. This 50 year period includes the tax year currently in question, 1999. Because each tax year constitutes a separate cause of action for exemption purposes, (People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987)), the fact that the lease obligated CPI to pay rental amounts greater than \$1.00 in tax years subsequent to 1999 is irrelevant to this proceeding. Therefore, the determinative factor in this matter is whether the leasehold which generates that return is primarily used to: (a) produce income; or, (b) further one or more specifically identifiable tax exempt purposes. *Id.*

In this case, the lease specifically requires that the subject property be used for no purpose other than operating a housing project of the type described in Section 811 of the National Affordable Housing Act, 42 USC §§8013(a) – 8013(n). Therefore, the outcome

of this case turns on whether operating such a project constitutes an “exclusively religious” and/or “exclusively charitable” use.

D. Use Issue

Technical distinctions between the charitable exemption, which requires both exempt ownership and exempt use (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968)), and the religious exemption, which, in the present context, requires only exempt use (People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*), can become blurred if dispensing charity forms an integral part of a religious organization’s mission. First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1117 (2nd Dist. 1999). Both the applicant, Wheaton Franciscan, and its lessee, CPI, are affiliates of the Roman Catholic Church that engage in altruistic works in furtherance of their respective organizational missions. (Applicant Ex. Nos. 1, 2, 13, 16, 17). Accordingly, the facts presented herein do not warrant technical applications of the exempt ownership and exempt use requirements. Rather, they call for a broader perspective which focuses on whether operating a Section 811 housing project furthers these entities’ organizational objectives.

There are nevertheless statutory provisions to consider, the most pertinent of which are found in Section 15-65(c) of the Property Tax Code. That provision imposes the following relevant exemption requirements: first, that the property be a facility for persons with a developmental disability; second, that the property be owned by an entity that qualifies for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code; third, that either: (i) the property be improved with facilities that

are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended[;]” or, (ii) the bylaws of the facility provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services; and, fourth, that the property must be “actually and exclusively used for charitable or beneficent purposes.” ¹¹ 35 ILCS 200/15-65, 15-65(c).

Based on applicant’s lease with CPI (Applicant Ex. No. 5) and CPI’s capital advancement agreement with HUD (Applicant Ex. No. 7), I conclude that the subject property was in fact improved with a facility for the developmentally disabled throughout 1999. I further conclude that applicant and CPI were exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code during 1999 because both entities were included within the group letter ruling issued to the to the United States Conference of Catholic Bishops on March 25, 1946. (Applicant Ex. Nos. 3, 16, 17).

The subject property was not, however, improved with a Section 202 housing project. Rather, it was improved with a facility built, financed and operated pursuant to Section 811 of the National Affordable Housing Act, 42 USC 8013. Section 15-65(c) of the Property Tax Code does not specifically provide for the exemption of Section 811 projects. Because exemption statutes must be construed strictly in favor of taxation, (People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)), I cannot permit any similarities between Section 202 and 811 projects,

11. The first paragraph of Section 15-65, applicable to all subsections promulgated thereunder, states in pertinent part that “all property *of the following* is exempt *when actually and exclusively used for charitable or beneficent purposes ...[.]*” 35 ILCS 200/15-65. (emphasis added).

such as the forms governing their operation, to provide a legally sufficient basis for enlarging the class of exempt properties beyond the one specifically identified in the applicable legislation.

Section 15-65(c) does nonetheless contain a provision that exempts facilities for the developmentally disabled if, *inter alia*, the organizational documents governing their operation provide for “a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services.” 35 ILCS 200/15-65(c). The capital advance agreement (Applicant Ex. No. 5) by which HUD effectively governs all use of the subject property specifically prohibits any operating entity, including applicant and CPI, from imposing any such monetary obligations on the population that it serves. Furthermore, the testimony of applicant’s vice president of operations, Sue Dillberg, specifically establishes that neither applicant nor CPI impose any fees for services rendered at the subject property. (Tr. pp. 23-24). Under these circumstances, applicant’s only barrier to exemption under Section 15-65(c) becomes proving that the subject property was actually and exclusively used for charitable purposes.

Charitable purposes are be ones that, by definition, benefit an indefinite number of people and persuade them to an educational or religious conviction that benefits their general welfare or somehow reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They must also be ones undertaken by applicants that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and,

(5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits they dispense. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

The Korzen factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicants: (1) primarily serve non-exempt interests, such as those of its own dues-paying membership (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operate primarily in the public interest and lessen the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*).

It cannot be disputed that both applicant and CPI lessen governmental burdens by providing housing and supportive services, that the government would otherwise have to provide itself, to HIV positive individuals who are disabled and have very low incomes in accordance with the applicable federal standards. (*See*, 24 CFR §813, 24 CFR §215, 24 CFR §236, 24 CFR §885, 24 CFR §§889, 890; 42 U.S.C.A § 8013(k)(2); 42 U.S.C.A §15002(8)). Furthermore, the extensive restrictions imposed by the terms of the capital advance agreement (Applicant Ex. No. 5) make it legally impossible for applicant and CPI to use the subject property for any purpose other than ones that reduces governmental burdens in this manner. Therefore, the Department's determination in this matter should be reversed.

WHEREFORE, for all the above-stated reasons, I hereby recommend that real estate identified by DuPage County Parcel Index Number 05-19-201-005 be exempt from 1999 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 ILCS 200/1-1.

Alan I. Marcus
Administrative Law Judge

February 19, 2002
Date

The leases which governed each resident's tenancy provide, *inter alia*, that CPI could terminate any tenancy for non-payment of rent beyond any grace period available under State law. Applicant Ex. No. 9; Tr. pp. 36, 40-41.

CPI has in fact evicted residents from the subject property. Most of these evictions have been for selling drugs, possession of illegal substances or other safety-related issues. However, CPI has also evicted residents for non-payment of rent or other reasons relating to enforcement of its obligations under the capital advance agreement. Tr. pp. 36-37, 40-41.

A tenant occupying a unit in a housing project for the developmentally disabled may be evicted for non-payment of rent or other financial obligation due under the lease, but only after expiration of any grace period provided by State law. Administrative Notice of 24 CFR §§274.3(c)(4), 891.430(b).